

Letter of Findings Number: 04-20120475P
Sales/Use Tax
For Tax Period: 4/2012 – 6/2012

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ISSUE

I. Tax Administration–Penalty.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of a ten percent penalty.

STATEMENT OF FACTS

Taxpayer failed to correctly remit its sales tax payments for three months in 2012. The Indiana Department of Revenue ("Department") imposed a ten percent penalty for each month. Taxpayer protests the imposition of these penalties. An administrative hearing regarding the protest was held, and this Letter of Findings results. Further facts will be presented as required.

I. Tax Administration–Penalty.

DISCUSSION

As noted, the Department issued a proposed penalty assessment for the months in question. Taxpayer, in turn, protests the imposition of penalties and requests a waiver of those penalties. In its protest letter, Taxpayer's representative states:

[W]e discovered that [Taxpayer] sales tax for April 2012, May 2012, and June 2012 had been filed incorrectly and that the wrong amount had been paid. After recalculating the sales tax for those months we submitted an amendment notice via the INTax website.

Taxpayer uses an accounting firm to calculate its sales tax. In its protest letter, Taxpayer's representative states that the "error was caused by the actions of a new employee who misread the Excel sheet that we use to compute the sales tax amount."

Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. IC § 6-8.1-10-2.1. The Indiana Administrative Code, [45 IAC 15-11-2](#) further provides in relevant part:

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(c) The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

In the present case, Taxpayer argues that its failure to properly remit sales tax for three months was due to an error by a new employee at Taxpayer's accounting firm. Taxpayer further argues that "the employee involved found their error and corrected it without prompting from [the Department]...." A review of the Department's records shows that Taxpayer has a good payment history with the Department. Based upon Taxpayer's argument and information, the Department finds that Taxpayer has established it exercised ordinary business care and prudence under [45 IAC 15-11-2\(c\)](#). Thus the penalty should be waived.

FINDING

Taxpayer's protest is sustained.

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